



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND
POWER DISTRICT v. MILLER PARK, L.L.C.; MILLER PARK II, L.L.C.,
1 CA-CV 05-0730; CV-07-0207**

PARTIES AND COUNSEL:

Petitioner Salt River Project Agricultural Improvement and Power District (“SRP”)(Plaintiff):
Douglas Zimmerman, Michael J. O’Connor and John J. Egbert of Jennings, Strouss & Salmon,
P.L.C.

Respondents Miller Park, L.L.C. and Miller Park II, L.L.C. (“Miller Park”) (Defendants):
Steven A. Hirsch and Rodney W. Ott of Bryan Cave LLP.

FACTS:

Miller Park owns a parcel of approximately 200 acres of unimproved land in the Town of Buckeye, Arizona, most of which it purchased in July 1997 and the balance of which it purchased in January 2000. On April 16, 2001, Miller Park appealed Maricopa County’s valuation of the property for tax purposes for the 2002 tax year. Miller Park’s agent, Deloitte & Touche Property Tax Services (“Deloitte”), filed and pursued the appeal on Miller Park’s behalf. Miller Park claimed that the County’s valuation of the property at \$18,514 per acre “exceeds market value,” and further asserted that the correct valuation was less than \$10,000 per acre.

SRP commenced the current condemnation action on September 12, 2002, to obtain a 500,000-volt transmission line easement on approximately 16 acres of Miller Park’s land. Miller Park had taken significant steps toward development of the property between January 2000 and September 2002.

On April 16, 2004, well before trial, Miller Park served SRP with a \$2.3 million offer of judgment pursuant to Rule 68, Ariz. R. Civ. P. SRP did not respond to the offer and it was “deemed withdrawn.”

Also prior to trial, the trial court granted Miller Park’s Motion in Limine and excluded “any evidence regarding property tax assessments and appeals for the property that is the subject of this condemnation action.” The court stated it had read and considered the motion and supplemental memoranda, which included the subsequently depublished *American Support* case. *See State ex rel. Mendez v. American Support Foundation, Inc.*, 209 Ariz. 321, 100 P.3d 932 (App. 2004), ordered depublished by Supreme Court, 210 Ariz. 232, 109 P.3d 571 (April 19, 2005).

During trial, the jury was asked to decide three issues: (1) the fair market value, as of September 12, 2002, of the approximately 16 acres taken for the easement; (2) the percentage of the

land's value taken as a result of the easement; and (3) the amount of severance damages. Both sides presented widely disparate expert appraisal evidence. In addition, Miller Park's managing member, Michael Pierce, testified that in his opinion, the property was worth \$174,240 per acre. Pierce's opinion was based, at least in part, on a contract for sale of half the property that was allegedly aborted by the prospective purchaser because of SRP's easement. The contract called for sale of the property for \$4.00 per square foot, or \$174,240 per acre.

On February 4, 2004, after an eight-day trial, the jury returned its verdict as follows: \$2,467,790.37 as the fair market value of the property taken in September 2002; \$2,243,738.01 as severance damages to the remaining property; for a total of \$4,711,528.38. The amount attributable to the fair market value of the property taken was greater than both experts' valuations but less than Pierce's opinion of valuation. The amount attributable to severance damages was less than both Pierce's and Miller Park's expert's valuations. Both amounts were substantially greater than SRP's expert's valuations.

In a minute entry filed June 13, 2005, the trial court found that Miller Park was not entitled to an award of mandatory costs under Rule 68(d), Ariz. R. Civ. P. However, the Court made a discretionary award of taxable costs under A.R.S. § 12-1128 in the amount of \$5,165.65.

In a minute entry filed August 17, 2005, the trial court denied SRP's Motion for New Trial or in the alternative Remittitur of Judgment, finding as follows:

The Court finds that the jury's verdict, in its entirety, was supported by the evidence. Although there was a significant dispute as to the valuation and damages, the Court finds that the jury's verdict was supported by the evidence presented as to the award for the part taken as well as the verdict for severance damages to the remainder. The Court finds that the verdict fell within the range of possible calculations of damages.

SRP timely appealed the judgment on the jury's verdict, and Miller Park timely cross-appealed solely on the issue of Rule 68 sanctions.

In an opinion filed May 15, 2007, the court of appeals affirmed in part, reversed in part and remanded. The court affirmed the verdict but reversed and remanded the trial court's determination that Miller Park was not entitled to mandatory costs under Rule 68(d), Ariz. R. Civ. P. The court held that Miller Park is entitled to Rule 68 sanctions, except for prejudgment interest. SRP filed its petition for review in this Court on June 15, 2007. Miller Park filed its response on July 16, 2007.

ISSUES PRESENTED FOR REVIEW:

1. Did the Court of Appeals improperly reject the majority view that a property owner's prior valuation of its land for tax purposes is generally admissible in condemnation proceedings, which majority view this Court adopted in *State ex rel. Morrison v. Jay Six Cattle Co.*, 88 Ariz. 97, 353 P.2d. 185 (1960)?

2. Did the Court of Appeals err in holding, contrary to the Division 2's decision in *Pima County v. Hogan*, 197 Ariz. 138, 3 P.3d 1058 (App. 1999), that there is no conflict between the offer of judgment sanctions in Rule 68, Ariz. R. Civ. P., and the statute providing for discretionary awards of costs in condemnation actions, A.R.S. § 12-1128?

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.